

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 99-0036
SALES AND USE TAX
FOR TAX PERIODS: 1995-1997**

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1. Sales and Use Tax: Like Kind Exchange.

Authority: IC 6-2.5-2-1, 6-2.5-2-2, IC 6-2.5-1-5, IC 6-2.5-1-6.

Taxpayer protests the imposition of gross retail tax the value of certain trade-ins.

2. Sales and Use Tax: Purchase for resale exemption.

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-8, IC 6-8.1-5-1 (b).

Taxpayer protests the imposition of gross retail tax on an airplane.

Statement of Facts

Taxpayer is in the business of selling, servicing and repairing recreational vehicles along with over the counter sales of parts and accessories. After an audit, additional sales and use tax, interest and penalty were assessed. Taxpayer protested a portion of the assessment and a hearing was held. Further facts will be provided as necessary.

Discussion

1. Sales and Use Tax: Like Kind Exchange.

Indiana imposes a sales tax on retail sales. IC 6-2.5-2-1. The sales tax is measured by the gross retail income received by the retail merchant from the purchaser. IC 6-2.5-2-2. Gross retail income does not include the value of "any tangible personal property received in a like kind exchange. . ." IC 6-2.5-1-5. A like kind exchange is the exchange

of personal property of the "same kind or character, regardless of grade or character." IC 6-2.5-1-6.

Taxpayer accepts trade-ins to reduce a portion of the purchase price of its recreational vehicles. If those trade-ins qualify as a like kind exchange under the law, the value of the trade-in is deducted from the total sales price before the sales tax is applied to the cash paid in the transaction. Additional sales tax was assessed on the value of the trade-in in fourteen transactions which the Auditor did not consider the trade-in to be a like kind exchange.

In one instance a customer purchased a travel trailer with a side trailer as the trade-in. Both of these items were trailers. Therefore, they qualify for like kind exchange treatment. Taxpayer's protest to the assessment of additional tax on the exchange of a side trailer for a travel trailer is sustained.

In another instance Taxpayer accepted jet skis as a trade-in for a 5th wheel trailer. Jet skis are for water recreation and are not of the same character as a trailer. Therefore, this transaction did not qualify for the like kind exchange treatment. Taxpayer's protest to this assessment is denied.

Taxpayer also accepted a boat as a trade-in for a motor home. A boat is a watercraft. A motor home is a motor vehicle. These are not items of the same kind. Therefore the transaction does not qualify for the like kind exchange treatment. Taxpayer's protest to this assessment is denied.

Each of the other purchases included the trade of one motor vehicle for another. Each of the motor vehicles required licensing to be driven on the public highway. It doesn't matter if the motor vehicle is a pick-up truck, a motor home, or an automobile. Taxpayer's protest to the assessment of additional sales tax on these transactions is sustained.

Finding

Taxpayer's protest is sustained in part and denied in part.

2. Sales and Use Tax: Purchase for resale exemption.

In 1996 Taxpayer purchased an airplane without paying sales or use tax. IC 6-2.5-3-2 (a) imposes the state gross retail or use tax "on the storage, use, or consumption of tangible personal property in Indiana." There are several statutory exemptions to the use tax. Taxpayer contends that its purchase and use of the airplane qualifies for exemption pursuant to IC 6-2.5-5-8 as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

The tax assessment is presumed to be correct. Taxpayer bears the burden of proving that the assessment is incorrect and the airplane qualifies for the resale exemption. IC 6-8.1-5-1 (b). Taxpayer submitted a copy of its aircraft dealer license, documentation that the dealer aircraft inventory tax was paid on this airplane, copies of advertisements for this and another airplane and evidence that the subject airplane was actually sold. These documents do not, however, establish why it was three years before the airplane was sold. Nor do they explain why the plane was insured for business and personal use. This evidence indicates that Taxpayer's acquisition and use of the airplane was at least partially for personal use. Therefore the purchase of the airplane did not qualify for the resale exemption.

Finding

Taxpayer's second point of protest is denied.